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SUBJECT: Jamaica's Libel Laws: A Chilling Effect on Crime and  
Corruption Reporting

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Jamaica's Libel Laws: A Chilling Effect on Crime and Corruption  
Reporting

## Summary and Analysis

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¶1. (U) Jamaica's libel laws have a chilling effect on investigative reporting by the press and hinder the media's ability to bring corruption and criminal activity to light. A duty to inform subjects of media reporting prior to publishing puts the subject of a story on notice and provides them with an opportunity to seek an injunction to stymie publication. The risk of costly court-awarded damages also discourages media owners from aggressively pursuing the types of stories that would bring information about corruption and criminal activity to light. Libel laws that favor perpetrators may be one of the contributing factors to the country's seemingly unfixable corruption and crime problems. In his inaugural speech in September 2007, Prime Minister (PM) Bruce Golding promised legislative reform for libel laws; however, to date the process has been slow moving. End Summary and Analysis.

## Libel Laws Protect Criminals, Silence Media

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¶2. (SBU) Jamaica's libel laws are used by public figures as a sword to quiet the voices of dissent and opposition, and by criminals as a tool to silence investigative reporting of possible criminal activity. Emboffs spoke with Cliff Hughes, owner of the Nationwide News Network who said, "As a journalist, if you haven't been sued for libel, then you're not doing your job." The potentially high damages for defamation suits have a chilling effect on freedom of expression and the press. In the landmark case of Anthony Abrahams v. The Gleaner Company, a jury ordered owners of Jamaica's oldest newspaper to pay former Minister of Tourism, Eric Anthony Abrahams, J\$80.7 million (then-US \$2.5 million) in damages for a defamatory statement published in the Jamaica Gleaner newspaper. Although the award was later reduced to J\$35 million (then-US \$1.1 million), the award of significant damages encouraged self-censorship among journalists and media personnel. "A news organization in this country could be brought down by one libel suit," said Desmond Richards, President of the Press Association of Jamaica (PAJ). "How many news organizations could pay out a US\$ 1 million award and still open the next day?"

Example: Libel Laws Effect on Ponzi Schemes

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¶3. (SBU) Members of the financial community have said that fears of libel action influenced the lack of media investigation into the ponzi scheme operations of the Olint and Cash Plus that rose to prominence for a few years before crashing in 2008 (Reftel A, B, C). Even the Financial Services Commission (FSC), whose duty is to supervise and regulate the securities industry, did not report these clubs to be Ponzi schemes. Hughes told Emboff, "If the FSC, who is in a position to request documents and gather evidence to determine if these clubs were legitimate, did not report them as Ponzi schemes, then media organizations were certainly not going to take that risk upon themselves."

#### Putting The Subject of Investigation On Notice

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¶4. (SBU) Public officials and wrongdoers have since been able to use threats of libel suits to prohibit media disclosure of information in the public interest and hinder press investigations into possible criminal activity. In addition, the court-created "responsible journalism" defense to libel has opened the flood gates for numerous pre-emptive lawsuits. To meet the standard for this defense, journalists may be required to contact and seek comment from the subject of a defamatory statement, prior to

publication. Thus, putting the subject of the investigation on notice of the press interest in their activities and therefore affording the subject an opportunity to seek an injunction against publication.

#### Burden of Proof

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¶5. (SBU) Under the current Libel and Slander Act, a defendant may still be criminally tried and imprisoned for publishing a defamatory statement, even if that statement ultimately is proved to be true. Jamaica's criminal libel laws were established to protect English nobility from criticism. This offence was used to restrict the same freedom of expression now guaranteed by the Jamaican Constitution. In Justice Hugh Small's report to PM Golding about changes to Jamaica's libel laws, he notes: "It is remarkable that under section 7 of the Libel and Slander Act 1851, the truth of the matters published shall not amount to a defense unless it was for the public benefit that the matters should be published." This paragraph also makes reference to how Marcus Garvey and Leonard Howell were imprisoned for criminal libel. In addition, Jamaican libel actions only require that claimants show the comments made about them were defamatory in order to bring a libel claim. The libel action begins with the assumption that all defamatory statements are false, placing the burden of proof on the defendant to show that such defamatory statements are true or substantially true. Therefore, journalists are forced to pre-eminently present documented evidence necessary to establish a libel-proof defense prior to publishing stories of public interest.

#### Modernizing Jamaica's Libel Laws

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¶6. (SBU) Media professionals have petitioned Parliament to modernize libel laws in order to bring them in line with the legislative revisions found in other common law jurisdictions. Because of the two countries' historical relationship, Jamaica's libel laws mirrors the laws of the United Kingdom. This approach to libel values a claimant's reputation over the defendant's right to freedom of speech. In order to modernize Jamaica's libel laws, journalists advocate: (1) the elimination of criminal libel as an

offense; and (2) changing the burden of proof from defendant to plaintiff in a libel action.

#### Finding a Legislative Solution...

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17. (SBU) Parliament is currently debating proposed amendments to the libel laws. These amendments were proposed by a 12-person committee, commissioned by PM Bruce Golding, to review the laws and make recommendations that would facilitate greater transparency in government and promote freedom of the expression. In his inauguration speech in September 2007, PM Golding said he was committed to ensuring that these laws cannot be used as a firewall to protect wrongdoers. PM Golding has personally endorsed the proposed amendments, saying publically: "I believe that those of us who offer ourselves for public office, particularly elected office, where we ask the people to trust us and entrust in our hands, power, must be prepared to expose and subject ourselves to a higher standard of transparency than the ordinary citizen, who is just going about his business."

#### ... Is Slow Moving

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18. (SBU) The committee completed and submitted its report to the PM and Parliament on February 29, 2008. The report recommended specific legislative changes necessary to meet the Government of Jamaica's objective of modernizing Jamaica's libel laws "so that those engaged in corruption can be easily exposed and brought to justice." According to PM Golding, "the committee did their work, they submitted their report, we took it to Parliament and it has spent a long time before a Parliamentary Committee."

#### Australia As A Model

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19. (SBU) Although the committee refrained from recommending a standard to be used by courts to award damages in libel cases, committee members did recommend that the country adopt legislation that would allow a judge instead of a jury to determine the appropriate amount of damages to be awarded to plaintiffs. The committee highlighted the Australian Defamation Act as a model for Jamaica. In Australia, the role of the jury is to find whether the defamatory matter had been published by the defendant, but the judge assesses the amount of compensation to be awarded. The judge ensures that there is an "appropriate and rational relationship" between the amount of compensation awarded and the harm sustained by the plaintiff. The Australian system also institutes a maximum amount of damages for non-economic loss and abolishes awards of punitive damages in defamation cases.

10. (SBU) While the committee recommended that criminal libel be abolished and called for self-regulation of the media, committee members disagreed on the appropriate standards for determining libel when public officials sue in relation to statements concerning public affairs. The committee came up with three approaches: (1) adopt the American standard to allow citizens, not acting in actual malice, to freely criticize public officials regarding matters of public interest; (2) reject the "actual malice" standard but require that a plaintiff prove the falsity of a defamatory statement when bringing a libel claim; or (3) leave the libel laws as is to encourage qualified people to pursue public office.

#### Conclusion

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¶11. (SBU) Jamaica faces significant crime and corruption challenges that hinder economic growth and foreign investment; one of the tools to root out these problems is an active free press. Current libel laws restrain investigative journalism and tip the scales in favor of perpetrators. Like the multiple anti-crime legislative packages that are currently bogged down in Parliament, new libel provisions, if adopted, would be important tool to help the government better combat crime and corruption. Unfortunately, the political will to ensure legislative reform is passed in a timely manner is lacking.  
Parnell